

**REMARKS**

**STATUS OF THE CLAIMS**

Claims 1-20 are pending. Claim 1 has been amended to recite a fixed plate positioned at said inlet opening above said conveyor belt, wherein said fixed plate combines with said movable plate to provide a constant, vertical planar area of particulate indicative of a desired volumetric feed rate. Claim 11 has been similarly amended to recite a fixed plate positioned at said material inlet means, above said means for conveying the material, wherein said fixed plate combines with said movable plate to provide a constant, vertical planar area of particulate indicative of a desired volumetric feed rate. Claim 16 has been amended to recite the steps of positioning a fixed plate at the inlet opening, above the conveyor belt; and contacting the fixed plate with the particulate material, wherein the fixed plate combines with the movable plate to provide a constant, vertical planar area of particulate indicative of a desired volumetric feed rate. Claims 1, 11 and 16 have also been amended to recite that the movable plate has a hinged end and a free end wherein the movable plate is pivotally mounted at the hinged end.

Accordingly, no new matter has been added by these amendments and no estoppels are intended thereby.

Reconsideration and withdrawal of the outstanding rejections is respectfully requested in view of the following remarks.

**OFFICE ACTION**

**REJECTIONS UNDER 35 U.S.C. § 102(b)**

(1) Claims 1-4, 8, 9, 11, 12, 13, 15, 16, 17, 18 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Strehlow '520. Applicant respectfully traverses this rejection.

Applicant notes that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. (quoting *Verdegall Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)).

Without conceding the propriety of the prior art rejection, claim 1 has been amended to recite a fixed plate positioned at said inlet opening, above said conveyor belt, wherein said fixed plate combines with said movable plate to provide a constant, vertical planar area of particulate indicative of a desired volumetric feed rate. Claim 11 has been similarly amended to recite a fixed plate positioned at said material inlet means, above said means for conveying the material, wherein said fixed plate combines with said movable plate to provide a constant, vertical planar area of particulate indicative of a desired volumetric feed rate. Claim 16 has been also amended to recite the steps of positioning a fixed plate at the inlet opening, above said conveyor belt; and contacting the fixed plate with the particulate material, wherein the fixed plate combines with the movable plate to provide a constant, vertical planar area of particulate indicative of a desired volumetric feed rate. Moreover, claims 1, 11 and 16 recite a movable plate that has a hinged end and a free end wherein the movable plate is pivotally mounted at the hinged end. Strehlow fails to disclose at least these aspects of claims 1, 11 and 16.

Turning to Strehlow, this patent simply discloses a retractable gate skirt only, and not a movable plate that combines with a fixed plate positioned at the inlet opening, to provide a constant, *vertical planar area* of particulate that is indicative of a desired volumetric feed rate, as recited in the claims. For at least this reason, Applicant respectfully submits that claim 1 is allowable. Claims 2-10 depend from independent claim 1 and are believed allowable for at least the same reason as claim 1, while claims 12-15 depend from independent claim 11 and are

believed allowable for at least the same reason as claim 11. Claims 17-20 depend from independent claim 16 and are therefore also believed allowable.

Accordingly, Applicant respectfully requests that this § 102(b) rejection of claims 1-4, 8, 9, 11, 12, 13, 15, 16, 17, 18 and 20 be withdrawn.

(2) Claims 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lovette '261. Applicant respectfully traverses this rejection.

As discussed in connection with the prior 35 U.S.C. § 102(b) rejection of the Office Action, claim 1 has been amended to recite a fixed plate positioned at said inlet opening, above said conveyor belt, wherein said fixed plate combines with said movable plate to provide a constant, vertical planar area of particulate indicative of a desired volumetric feed rate. Claim 11 has been similarly amended to recite a fixed plate positioned at said material inlet means, above said means for conveying the material, wherein said fixed plate combines with said movable plate to provide a constant, vertical planar area of particulate indicative of a desired volumetric feed rate. Claim 16 has been also amended to recite the steps of positioning a fixed plate at the inlet opening, above said conveyor belt; and contacting the fixed plate with the particulate material, wherein the fixed plate combines with the movable plate to provide a constant, vertical planar area of particulate indicative of a desired volumetric feed rate. Like Strehlow '520, Lovette '261 also fails to disclose at least these aspects of the claims.

Lovette '261 discloses a control and apparatus for operating hopper gates only. See, for example, FIGS. 1 and 2 of Lovette '261. Thus, Applicant respectfully submits that Lovette '261 does not teach or suggest a movable plate that combines with a fixed plate positioned at the inlet opening, wherein the plates combine to provide a constant, *vertical planar area* of particulate

that is indicative of a desired volumetric feed rate, as recited in the claims. Accordingly, for at least these reasons, Applicant respectfully requests that this § 102(b) rejection of claims 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 be withdrawn.

REJECTIONS UNDER 35 U.S.C. § 103(a)

(1) Claim 10 stands rejected under 35 U.S.C. § 103 (a) as being allegedly unpatentable over Stock '518.

To establish a prima facie case of obviousness, the prior art references must teach or suggest all of the claim elements. M.P.E.P. § 2143. There must also be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references. *Id.* Applicant respectfully submits that these criteria for obviousness have not been satisfied.

With respect to teaching or suggesting all the claim limitations, Stock '518 is completely silent with respect to the recited movable plate along with the fixed plate positioned at said inlet opening above the conveyor belt, wherein the fixed plate and the movable plate combine to provide a constant, vertical planar area of particulate indicative of a desired volumetric feed rate. Moreover, the leveling bar 65 of Stock '518 does not have a hinged end and a free end as recited in claims 1, 11 and 16. Thus, Applicant respectfully submits that a prima facie case of obviousness has not been established and respectfully requests that this § 103 (a) rejection be withdrawn.

In view of the foregoing, reconsideration and allowance of the application are believed in order, and such action is earnestly solicited.

Should the Examiner believe that a telephone conference would expedite issuance of the application, the Examiner is respectfully invited to telephone the undersigned attorney at 202/861-1714.

Respectfully submitted,

BAKER & HOSTETLER LLP

  
Stephen S. Fabry  
Registration No. 51,661

Date: 2/2/04  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
Tel. 202 861 1500  
Fax. 202 861 1783